

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3315/MUM/2023**  
**Assessment Year: 2009-10**  
**&**  
**ITA No. 3314/MUM/2023**  
**Assessment Year: 2010-11**

Bharat Devshi Dagha,  
3/13, Geet Govind CHS.  
Manpada Road,  
Dombivli East-421 201.  
**PAN NO. AARPD 9399 Q**  
**Appellant**

ITO, Ward 3(1),  
Rani Mansion  
**Vs.** Maharashtra-421301.

**Respondent**

**Assessee by** : Mr. Kalpesh Khatri, CA  
**Revenue by** : Mr. Surendra Kumar Meena, Sr. DR

Date of Hearing : 07/02/2024  
Date of pronouncement : 07/02/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

These appeals by the assessee are directed against a common order dated 19.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals), Pune-11 [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2010-11. As facts and circumstances and the issue involved in both these appeals being common, same were heard together and disposed off by way of this consolidated order for convenience.



2. The grounds raised in both the appeals being identical except difference of the amount involved, for sake of brevity, the ground raised in assessment year 2009-10 are only reproduced as under:

*1. On the facts and in law, the Hon. CIT (A) erred in confirming addition of Rs.12,89,039/-, on account of purchase treated as income from Hawala dealers as per the information provided by Sales Tax Department, Maharashtra which is bad in law.*

*2. On the facts and in law, the Hon. CIT (A) erred in confirming the judgements in favor of Appellant which is also against the law.*

3. Briefly stated, facts of the case are that during the year under consideration, the assessee was carrying proprietary business under the name and style of M/s Robin International. The assessee filed return of income for assessment year 2009-10 on 27.09.2009 and for assessment year 2010-11 on 23.09.2010, declaring total income of Rs.2,67,352/- and Rs.3,10,624/- respectively.

3.1 Subsequently, the Assessing Officer received information from the Investigation Wing of the Income-tax Department that during assessment year 2009-10 and 2010-11, the assessee obtained bogus purchase bills from certain 'hawala' dealers and accordingly the Assessing Officer recorded reasons to believe that income escaped assessment, therefore, he reopened the assessment by way of issuing notice u/s 148 of the Income-tax Act, 1961 (in short the 'Act'). In the reassessment completed u/s 147 of the Act for assessment year 2009-10 on 04.03.2015, the Assessing Officer disallowed the entire bogus purchases amounting to Rs.12,89,039/-. Similarly, in assessment year 2010-11 also the



Assessing Officer in the reassessment order dated 04.03.2015 disallowed entire amount of bogus purchase amounting to Rs.9,87,466/-.

4. On further appeal, the Ld. CIT(A) upheld the disallowance of bogus purchases in assessment year 2009-10 and followed his finding in assessment year 2010-11.

5. Aggrieved the assessee is in appeal before the Tribunal by way of raising the grounds as reproduced above.

6. We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) dismissed the objection of the assessee against reopening of the assessment. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“6. The first ground of appeal raised by the appellant is regarding the reopening of assessment u/s 147 of the Act. During the appellate proceedings, no submission regarding this ground of appeal has been filed by the appellant explaining the reasons for which the action of the Assessing Officer of issuing notice u/s 148 of the Act is invalid. These facts suggest that the appellant is not pressing this ground of appeal. Even otherwise, it is seen from the assessment order that fresh information in the form of letter dated 6.06/02/2013 was received from the Investigation Wing informing that the assessee is a beneficiary of bogus purchase bills issued by various Hawala Dealers. It is a well settled legal position that the notice u/s 148 of the Act can be issued if the Assessing Officer receives fresh information indicating that the income of the assessee has escaped assessment. Some of the leading decisions on the issue of reopening of assessment are as under:*

*6.1 The, Hon'ble Supreme Court in the case of Asst. CIT v. Rajesh Jhaveri Stock Brokers P. Ltd. [2007] 291 ITR 500 while examining the requirement of the issue of notice u/s 148 held that all that is required for issue of notice under section 147, is "reason to believe" that some income has escaped assessment in the following words:-*



*"The expression "reason to believe" in section 147 would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed the requisite belief. Whether material would conclusively prove escapement of income is not the concern at that stage. This is so because the formation of the belief is within the realm of the subjective satisfaction of the Assessing Officer."*

6.2 Further, the Hon'ble Supreme Court in *Central Provinces Manganese Ore Co. Ltd vs ITO* [1991] 191 ITR 662 has observed that at the stage of initiation of proceedings u/s 147 of the Act, what is relevant is the existence of reasons to make the Income-tax Officer believe that there has been under-assessment of the assessee's income for a particular year. The final outcome of proceedings is not relevant. Also, Hon'ble Supreme Court in the case of *Raymond Woollen Mills Ltd Vs ITO* [1999] 236 ITR 34 (SC) while examining the issue of validity of notice u/s 148 has held that at the stage of initiation of proceedings u/s 147 of the Act, we have only to see whether there was prima facie some material on the basis of which department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

6.3 The issue whether inference of the assessing officer can be questioned, has been examined by Hon'ble Supreme Court in several other cases wherein Hon'ble Supreme Court has held that the assessee may challenge the validity of a notice on the ground that conditions precedent reopening of case does not exist, but an investigation, whether the inferences raised by the assessing officer are correct or proper cannot be made, as held in case of *CIT vs A.Raman & Co.* (1968) 67 ITR 11, 16 (SC). If there are in fact some reasonable grounds for assessing officer to believe that there had been any non-disclosure as regards material fact, whether the grounds are adequate or not is not a matter for the court to investigate because sufficiency of the ground which induced assessing officer to act is not a justifiable issue as held by Hon'ble Supreme Court in case of *S. Narayanappa vs. CIT* (1967) 63 ITR 219

6.4 Examining a similar issue in the case of *Phool Chand Bajrang Lal and another vITO* (1993) 203 ITR 456 (SC) where Assessing Officer located at Ajamgarh in UP after receiving information of accommodation entry from the ITO Calcutta re-opened the case u/s 147 of the Act, Hon'ble Supreme Court approved the decision of the AO to issue notice u/s 148 of the Act and has held as under:-



*"Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief.*

6.5 Hon'ble Supreme Court in another case *Calcutta Discount Co. Ltd v ITO (1961) 41 ITR 191 201-02 (SC)* examining the power of court to investigate the belief of the AO has held as under:-

*"All that is necessary to give special jurisdiction under section 147(a) is that the Assessing Officer had when he assumed jurisdiction some prima facie grounds for thinking that there has been some non-disclosure of material facts. Whether these grounds were adequate or not for arriving at such conclusion would not be open for the Courts' Investigation. Clearly it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that Assessing Officer had no material at all before him for believing that there had been such non-disclosure."*

7. In the present case, a perusal of the assessment order clearly suggests that information received by the Assessing Officer was specific, giving the details of Hawala Dealers and the amounts of bogus purchases made by the appellant during the year under consideration. The information received by the Assessing Officer also contained the affidavits/deposition of these Hawala Dealers wherein they had admitted of providing bogus purchase bills to various beneficiaries. The information also contained the details of enquiries made by the Sales Tax Department. Thus, the case was reopened u/s 147 of the Act on the basis of fresh and credible information. As stated above, during the appellate proceedings, no submission has been filed by the appellant on this issue. Considering the totality of facts of the case and the legal position as discussed above, the action of the Assessing Officer of issuing notice u/s 148 of the Act is upheld. The ground no. 1 raised by the appellant is DISMISSED."

6.1 Before us, no specific ground has been raised by the assessee against the reopening however, the Ld. Counsel for the assessee submitted that the Assessing Officer has not carried out any inquiry or investigation on receipt of information from the Maharashtra VAT



Department, prior to issue of notice u/s 148 of the Act. In our opinion during the relevant period i.e. 2009-10 and 2010-11 there was no requirement in the law for the Assessing Officer to carry out any inquiry or investigation prior to issue of notice u/s 148 of the Act. This requirement has been specified only in the amended provisions u/s 148A of the Act which are effective from 1/04/2021. During relevant period, the Assessing Officer was required to examine whether there was any relevant material on which a reasonable person could form the requisite belief that income escaped assessment as held by the Hon'ble Supreme Court in the case of **Asst. CIT v. Rajesh Jhaveri Stock Brokers P. Ltd. [2007] 291 ITR 500**. In the case, the information has been received from reliable authority of Income-tax Department and on the basis of the information of bogus purchase related to the assessee, the Assessing Officer has made the requisite belief, which in our opinion fulfils the requirement of the law, therefore we reject the contention of the Ld. Counsel of the assessee.

6.2 As far as grounds challenging the merit of the case is concerned, the brief facts qua the issue in dispute are that in assessment year 2009-10, the Assessing Officer received information that assessee received bogus purchases from following parties :

Tin of Hawala Dealers	Name of Hawala Dealer	PAN of Hawala Dealer	Assessment year	Amount in Rupees
1	2	3	4	5



27830560491V	SIDDHIVINAYAK TRADING COM	AUEPS9671B	2009-10	74,256
27100503032V	DEEPALI ENTERPRISES	AEAPT8181P	2009-10	1,03,116
27820645517V	V M UDYOG	AGKPC6868L	2009-10	86,424
27750595164Y	DEEP ENTERPRISES	.AMTP59884P	2009-10	91,702
27470616755V	SOMNATH INTERNATIONAL	AISPG1601K	2009-10	54,808
27660660931V	SHREE SAI TRADING CO	ATQPP8547E	2009-10	76,607
27630606579V	PAWAN ENTERPRISES	AEPPT8679H	2009-10	7,02,338
27960673085V	K K TRADING COMPANY	ARIPS0295C	2009-10	48,308
27650549144V	MAHAVIR ENTERPRISES	AACPT9032D	2009-10	51,480
			<b>Total</b>	<b>12,89,039</b>

6.3 Regarding the assessment year 2010-11, the list of bogus parties is reproduced as under:

Tin of Hawala Dealers	Name of Hawala Dealer	PAN of Hawala Dealer	Assessment year	Amount in Rupees
1	2	3	4	5
27760622173V	DHRUV SALES CORPORATION	AHYPD6115E	2010-11	109,221
27040651087V	RIDDHI ENTERPRISES	ACHPT0444J	2010-11	89,450
27820645517V	V M UDYOG	AGKPC6868L	2010-11	47,424
27520680408V	SHANTINATH CORPORATION	ABFPW4096G	2010-11	47,918
27540616280V	NAVDEEP TRADING CORPN.	AAAPV4487A	2010-11	57,200
27940631968V	VARAH LAXMI SALES AGENCY	AEPPT8680N	2010-11	13,520
27630606579V	PAWAN ENTERPRISES	AEPPT8679H	2010-11	464,282
27470704928V	BHUMI SALES CORPORATION	AAEPD7085N	2010-11	75,043
27330629636V	PADMAVATI TRADING CO.	ATYPK4207E	2010-11	83,408
			<b>Total</b>	<b>9,87,466</b>

6.4 The Assessing Officer in the assessment order(s) has duly mentioned the observation of Maharashtra VAT Authorities in respect of parties from whom the assessee had shown bogus purchases. During the course of the assessment proceedings, the Assessing Officer asked the assessee to produce documentary evidence in support of bogus purchases from said parties including confirmation from those parties, purchase bills, relevant delivery



challans, lorry receipts, stock register etc. However, the assessee only furnished ledger extracts for purchase made and copies of purchase bills. No other evidence in support of transaction of the goods etc. were filed therefore, for verification of the facts, the Assessing Officer issued notice u/s 133(6) of the Act directly to those parties calling for relevant information from those parties, however all those notices issued returned back by the postal authorities with the remark 'left place'. Therefore, the assessee was asked to produce those parties for verification. But, the Ld. Authorized Representative (AR) of the assessee expressed inability in producing those parties before the AO. The Assessing Officer also noted that the sales of the assessee was exceeding the minimum threshold for auditing of books of account and the tax auditor in the relevant column of the tax audit report, mentioned that stock register had not been produced before him. In absence of evidence for delivery of the materials including octroi receipt, stock register, transport expenses etc. The Assessing Officer was of the view that no goods were actually delivered to the assessee corresponding to those purchase bills. The Assessing Officer accordingly rejected the books result of the assessee invoking section 145(3) of the Act and made addition for the entire bogus purchases of Rs.12,89,039/- in assessment year 2009-10 and Rs.9,87,466/- in assessment year 2010-11.



6.5 On further appeal, the Ld. CIT(A) upheld the disallowance. The Ld. CIT(A) rejected the contentions of the assessee that no cross examination was provided to the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“10. I have considered the facts of the case and submissions made by the appellant. A perusal of the assessment order clearly suggests that the Assessing Officer had confessions of various Hawala Dealers from whom the appellant has claimed to have made purchases. The confessions made by these Hawala Dealers have been summarized by the Assessing officer in para 4.1 of the assessment order. Further, during the assessment proceedings, the assessee was asked to furnish confirmation, purchase bills, delivery challans, lorry receipts and stock register for these purchases, however, the assessee could produce only ledger extract for purchases and copies of purchase bills. Thereafter, the Assessing officer issued notice u/s 133(6) of the Act to these persons from whom the purchases were claimed to have been made. However, these notices remained unserved. Thereafter, the AR of the assessee vide order sheet dated 25/02/2015 was requested to produce these persons, however, the AR expressed inability to produce these vendors. The Assessing Officer further noticed that the Auditor in the audit report has specifically mentioned that the stock book was not produced.*

*11. The Assessing Officer then examined the confessions/affidavit and other related documents forwarded by the Sales Tax Department and he noticed that in many cases, bank statement of these Hawala Operators clearly indicate that cash was withdrawn immediately after cheques were deposited*

*12. The Assessing Officer accordingly held that it is a well settled legal position that onus to prove the genuineness of the purchases is on the assessee and unless the assessee furnishes proper material in support of his claim, it cannot be said that burden has been discharged by the assessee. The Assessing Officer further held that mere filing of purchase bills does not substantiate the genuineness of the purchases specially when the assessee could not furnish confirmation, relevant delivery challan, lorry receipts, stock register etc. The Assessing Officer also took note that the notices issued u/s 133(6) of the Act were returned back by postal authorities and the fact that despite of giving opportunity to the appellant, these parties could not be produced by the appellant. Accordingly, the Assessing Officer rejected the books of accounts u/s 145(3) of the Act by holding that the books of accounts cannot be stated as correct and complete*

*13. During the appellate proceedings, the appellant has not filed any evidence which could substantiate the genuineness of purchases*



made from alleged Hawala Dealers. In his reply, the assessee has merely harped upon the GP rate and NP rate declared by it in the books of accounts and argued that the GP rate and NP rate declared as per the books are reasonable. This argument of the appellant cannot be accepted in view of the findings of the Sales Tax Department and the enquiries made by the Assessing Officer which have been elaborately discussed in the assessment order. Merely filing of purchase bills without any supporting documents such as confirmation from the vendors, relevant delivery challan, lorry receipts, stock register, etc cannot be considered as sufficient compliance. The appellant has not made any effort to rebut the findings of the Assessing Officer that these Hawala Dealers were not traceable when enquiries were made by the Assessing Officer. Neither, the appellant has attempted to produce these parties before the Assessing Officer. Even the confirmations from so called vendors could not be filed by the appellant. Considering the totality of facts of the case and the legal position on this issue, it is held that the appellant has failed to substantiate the purchases claimed to have been made from 9 parties as mentioned earlier in this order.

14. The appellant has taken an argument that the Assessing Officer made additions merely on the basis of information provided by the Sales Tax Department and without providing an opportunity of cross-examination. This argument of the appellant is factually incorrect because during the assessment proceedings, the Assessing Officer conducted independent investigation wherein these persons were found not traceable. Thereafter, the AR of the appellant was asked to produce these persons but the AR conveyed his inability to produce these vendors. In view of these facts, the argument of the appellant that the addition was made solely on the basis of information provided by the Sales Tax Department is factually incorrect.

15. One of the arguments taken by the appellant is that no opportunity to cross-examine the vendors has been provided to him. In this connection, it is important to consider the various judicial announcements on the issue of cross-examination which are summarized as under:

16.1 It is a well settled law that the strict provisions of the Indian Evidence Act do not apply to income-tax proceedings and the Income Tax authorities are not bound by the technical rules of evidence. It has been held at various judicial forums that what is important for income tax proceedings is observance of principle of natural justice and strict rules of evidence does not apply. In the case of CIT v Metal Products of India 150 ITR 714 Punjab & Haryana High Court has held that:-

".....strict rules of evidence, as are known to the Indian Evidence Act, are not applicable to income-tax proceedings and thus the word 'evidence' in the income-tax proceedings has to be understood in the generic sense."



16.2 In the case of *GTC Industries Ltd. v ACIT 65 ITD 380*, ITAT Mumbai Bench has relied upon the judgment of Calcutta High Court in the case of *Kisanlal Agarwalla v. Collector of Land Customs AIR 1967 & Cal. 80* and has observed -

"90. There is a good deal of misconception on this question of the right of cross-examination as part of natural justice. Natural justice is fast becoming the most unnatural and artificial justice and for that confusion the Courts are no less responsible than the litigants. Ordinarily the principle of natural justice is that no man shall be a judge in his own cause and that no man should be condemned unheard. This latter doctrine is known as *audi alteram partem*. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably. A part of this principle is that if any reliance is placed on evidence or record against a person then that evidence or record must be placed before him for his information, comment and criticism. That is all that is meant by the doctrine of *audi alteram partem*, that no party should be condemned unheard. No natural justice requires that there should be a kind of a formal cross-examination. Formal cross-examination is procedural justice. It is governed by rules of evidence. It is the creation of Courts and not a part of natural justice but of legal and statutory justice. Natural justice certainly includes that any statement of a person before it is accepted against somebody else, that somebody else should have an opportunity of meeting it whether it (sic), by way of interrogation or by way of comment does not matter. So long as the party charged has a fair and reasonable opportunity to see, comment and criticise the evidence, statement or record on which the charge is being made against him the demands and the test of natural justice are satisfied. Cross-examination in that sense is not the technical cross-examination in a Court of law in the witness-box."

(emphasis supplied)

Further, in para 105, following has been observed -

105. In our opinion right to cross-examine the witness who made adverse report, is not an invariable attribute of the requirement of the dictum, *audi alteram partem*. The principles of natural justice do not require formal cross-examination. Formal cross-examination is a part of procedural justice. It is governed by the rules of evidence and is the creation of Court. It is part of legal and statutory justice and not a part of natural justice, therefore, it cannot be laid down as a general proposition of law that the revenue cannot rely on any evidence which has not been subjected to cross-examination.

However, if a witness has given directly incriminating statement and the addition in the assessment is based solely



or mainly on the basis of such statement, in that eventuality it is incumbent on the Assessing Officer to allow cross-examination.

*Adverse evidence and material, relied upon in the order, to reach the finality, should be disclosed to the assessee. But this rule is not applicable where the material or evidence used is of Collateral Nature."*

16.3 In the case of *Nokia India (P.) Ltd. v DDIT 59 taxmann.com 212 ITAT Delhi Bench* has held that:

*'Whether cross-examination is to be provided or not depends upon the facts of each case and there is no thumb rule or straight tight jacket formula facts of each case whether principles of natural justice have been complied with or not. If decision making authority has provided due opportunity to the person complaining of non-observance of principles of natural justice then it is for the person so complaining to demonstrate the same and show the prejudice caused to him. Mere bald assertion of non-observance of the principles of natural justice is of no consequence."*

16.4 In the case of *Kolte Patil Developer ITA No. 1478 to 1483/2013 dated 20.02.2015, Hon'ble ITAT (Pune)* has held:

*"Be that as it may, in our considered opinion, cross-examination of the suppliers would become material only when the assessee is able to demonstrate with certain primary evidence that the statements given by the suppliers are wrong or that they do not reflect the correct state of affairs. In this context, assessee has merely referred to the purchase bills issued by the suppliers and the cheque payments made. So however, there is no other evidence, namely, GRNs, octroi receipts, delivery challans, etc. which would show that the supplies were indeed made. Therefore, in such a situation, can the absence of cross-examination be fatal to the addition in question?, especially when at the initial stage, an opportunity of cross-examination was indeed allowed, which could not be availed for the reasons we have already stated above. In our view, the right of cross-examination is not automatic, but it would be incumbent only in a situation where the assessee is able to prima- facie demonstrate that the onus cast on him to establish his version of affairs is based on primary evidence. In this case, the assessee had failed to lead any primary evidence, viz. GRNs, octroi receipts, delivery challans, etc. which would show that the supplies were indeed made. "(para 24).*

16.5 The assesses cannot seek to cross examine their own witnesses who are known and connected to him and not regarded as third party, since under the rule of evidence the right to cross examine is given for



*the witness of the opposite party. For example, if the assessee makes a claim of purchase/investment/transaction in the Return of income and files the necessary details of the parties in support of the claim as witness and if the Revenue has collected material to rebut such claim which may be in the form of the statement recorded, the assessee has to discharge the onus cast upon him and in such condition he cannot take the plea of cross examination of his own witnesses unless he claims in the proceedings that the witnesses on which he relied upon turned hostile.*

*16.6 Where there are sufficient materials before the Assessing Officer/Appellate Authorities, the opportunity of cross-examination may not be given, being irrelevant. In the case of Smt. Kusum Lata Thakral v CIT 150 ITR 714, Punjab & Haryana High Court has held that it was clear from the findings recorded by the Tribunal that there was no relationship between the donors and the assessee and there was no natural love and affection. The Tribunal had followed the judgment of the jurisdictional High Court in Shri Tirath Ram Gupta v CIT [2008] 304 ITR 145/[2009] 177 Taxman 294 (Punj. & Har.), laying down that in the absence of natural love and affection, the gift could not be accepted as genuine. The question whether denial of opportunity of cross-examination results in violation of natural justice depends upon facts of each case. The object of cross-examination is to test the veracity of the version given in examination in chief. In the instant case, even if cross-examination was allowed and the donors who had disowned making of gifts, were confronted and shown to be factually wrong, the same would have made no difference, as there was no natural love and affection and, in its absence, the gifts were not genuine.*

*16.7 Similarly, when it is not feasible to give the opportunity of cross examination due to lapse of time or a large number of beneficiaries being part of a racket, their claim for cross-examination of a witness, may not be necessary. In the case of M/s. Meghna Towers Pvt. Ltd 87 taxmann.com 329 ITAT Delhi Bench has held that where Income-Tax Department had busted racket of bogus accommodation entries and name of assessee was discovered as one of beneficiaries of alleged racket and further amounts were actually found in books of assessee to be credited in name of alleged entry operators, burden was on assessee to prove that it was not a beneficiary of racket and did not allow the ground of appeal of the assessee that the Assessing Officer had erred in not making available the said entry operators for his cross examination.*

*16.8 In the case IA No. GA/2/2022 in ITAT/6/2022 PCIT vs Swati Bajaj & other cases(Calcutta High Court), the Hon. Calcutta High Court after examining the legal position on this issue, the Hon'ble High Court of Calcutta has held as under:-*

*58. Therefore, the assesseees have to specifically point out as to how they were prejudiced on account of non-furnishing of the investigation report in its entirety, failure to produce the*



persons from whom the statements were recorded for being cross examined would cause prejudice to the assessee as nowhere in the report the names of the assessee feature. The investigation report states that the investigation has not commenced from the individuals but it has commenced who had dealt with the penny stocks, concept of working backwards. This is a very significant factor to be remembered. Therefore, there has been absolute anonymity of the assessee in the process of investigation. The endeavour of the department is to examine the "modus operandi" adopted and in that process now seek to identify the assessee who have benefited on account of such "modus operandi". Therefore, considering the factual scenario no prejudice has been established to the assessee by not furnishing the investigation report in its entirety nor making the persons available for cross examination as admitted by the department in substantial number of cases the assessee have not been specifically indicted by those persons from whom statements have been recorded.

59. We are conscious of the fact that there may be exceptions however nothing has been brought before us to show that there was an exception in any of these appeals heard by us. In a few cases the assessee has been made known of the statement of the Director of the penny stock company or the stock broker, entry operator despite which those assessee could not make any headway. While on this issue, we need to consider as to whether and under what circumstances the right of cross examination can be demanded as a vested right. In *Kishanlal Agarwalla*, the Hon'ble Division Bench of this Court pointed out that no natural justice requires that there should be a kind of formal cross examination as it is a procedural justice, governed by the rules and regulations. Further it was held that so long as the party charged has a fair and reasonable opportunity would receive, comment and criticize the evidence, statements or records on which the charges is being against him, the demand and tests of natural justice are satisfied.

60. In *Bakshi Ghulam Mohammad*, the Hon'ble Supreme Court held that the right of hearing cannot include the right of cross examination and the right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being enquired into.

61. Having noted the above legal position, it goes without saying there is no vested right for the assessee to cross examine the persons who have not deposed anything against the assessee. The investigation report proceeds on a different perspective commencing from a different point and this has led to the enquiry being conducted by the assessing officer calling



*upon the assessee to prove the genuineness of the claim of LTCG.*

*(Emphasis supplied)*

*17.1 Thus, the basic principles which come out from above judicial pronouncements are as under:-*

- i) Rule of evidence is not strictly applicable to the Income Tax Proceedings.*
- ii) The cross examination to be given or not, depends on the facts of individual case.*
- iii) In the case of accommodation entry racket, it is not feasible for the Income Tax Authorities to grant cross examination to every beneficiary.*
- iv) Where there are sufficient materials before the Assessing Officer/Appellate Authorities, the opportunity of cross-examination may not be given, being irrelevant.*
- v) The assesses cannot seek to cross examine their own witnesses who are known and connected to him and not regarded as third party, since under the rule of evidence the right to cross examine is given for the witness of the opposite party*

*17.2 In the present case, a perusal of assessment order suggests that all the material which was available with the AO was confronted with the appellant and appellant had filed his replies on various aspects. It may be mentioned that the appellant was asked to produce the persons from whom purchases were claimed to have been made, however, the AR of the appellant conveyed his inability to produce these persons. As per AO, the appellant is a beneficiary of accommodation entry racket and as held by Hon. ITAT, Delhi bench in the case of Meghna Towers (supra), cross examination is not necessary. Moreover, as discussed earlier in this order, the addition was not made solely on the basis of confession of the Hawala Dealers. Considering the facts of the case and the case laws discussed above, it is held that cross-examination is not necessary in this case.*

*18. In view of the above discussion, it is held that the appellant has failed to substantiate the purchases amounting to Rs. 12,89,039/- claimed to have been made from 9 Hawala Dealers as tabulated earlier in this order. Accordingly, the action of the Assessing Officer in holding these purchases as non-genuine purchases is upheld.”*

6.6 Further, the Ld. CIT(A) has justified as why assessee is liable for disallowance of entire bogus purchases as against certain



percentage of gross profit. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“19. Finally, the appellant has relied on various case-laws wherein the addition on account of bogus purchases was restricted to certain percentage. The appellant has also argued that it is showing reasonable GP rates in his books (14.12% for AY 2009-10 and 15.64% for AY 2010-11). The appellant has also filed a copy of order of Ld. CIT(A)-3, Nashik in the case of Shri Rupesh Shah (AY 2009-10) dated 16/03/2019, wherein the disallowance was restricted to 10% of bogus purchases. The appellant has accordingly prayed for appropriate relief.*

*20. The issue that in the case of bogus purchases whether whole of the amount is to be added or a portion of such bogus purchases is to be added has been discussed by judicial bodies from time to time and it has been held that no uniform formula can be applied and the quantum of disallowance depends on the facts of each case. This issue has been elaborately dealt by Hon'ble ITAT Pune while dealing with a bunch of 15 appeals related to bogus purchases (appeal of M/s Chhabi Electrical Pvt Limited ITA No. 795/PUN/2014(Pune Tribunal) being the lead case). In this case, vide decision dated 28/04/2017, the Hon'ble ITAT has held as under:*

*40. In view of the above said ratios, the present issue of bogus purchases is to be decided on the basis of facts of each case. The first aspect is the information received by the Assessing Officer from the Sales Tax Department in respect of alleged hawala dealers. In many cases, the Assessing Officer has not even received the copy of statement recorded or any other evidence from the Sales Tax Department, except the list of hawala dealers and on the basis of the said list, the assessment proceedings have been completed in the hands of assessee, who had made the purchases from the said parties. In case, no such evidence has been received by the Assessing Officer before making addition, then there is no warrant in making aforesaid addition in the hands of assessee merely on the basis of so called list of hawala dealers. There are other cases, where the Assessing Officer had received the statement of the persons who were hawala dealers and who had admitted to have just issued bills of sale without delivery of goods. In such circumstances, there is evidence against the respective assessee that where the seller of the goods, has admitted not to have entered into real transaction of sale of goods. Against such non-transaction, there can be no delivery of goods, then it is case of passing of bills of sale and purchases, against which no VAT has been paid. Such bogus purchases are then to be added in the hands of assessee. Where the Assessing Officer had confronted the assessee with the information received, supplied copies of statements and*



where the persons have not been traced and no confirmation has been filed by the assessee in this regard, then the addition is to be made in the hands of assessee on account of such bogus purchases. In the facts and circumstances of some cases, the goods have been transferred by such hawala dealers to the respective purchasers, against which the assessee has to discharge onus of establishing the trail of goods which are transferred and further sold by them. Where the assessee is able to produce evidence of purchase of goods by way of weightment bridge receipts, transportation documents, payment of octroi and subsequent sale of goods to the respective parties and / or where the assessee has maintained complete quantitative details of purchase and sale of goods, then total bogus purchases cannot be added in the hands of assessee, but GP rate of 10% is to be applied on bogus purchases. Where the assessee does not establish its case, then the complete bogus purchases are to be added as hawala purchases. Further, in cases, where the statements are recorded and copies of which have been supplied to the assessee and assessee established the case of receipt of goods and its onward transmission by way of sale bills, then the factum of purchases by the assessee stands established in such circumstances. However, the benefit of purchases being made from grey market, needs estimation in the hands of assessee. The Tribunal has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases. Accordingly, it is so held. In view thereof, the issues which emerge are as under:-

I. In case no information is received by the Assessing Officer from the Sale Tax Department and no copy of statement recorded or any other evidence is received from the Sales Tax Department, then no addition is to be made on the basis of name of hawala dealer in the list prepared by the Sales Tax Department, where the assessee had asked for the said information during assessment proceedings.

II. Where the Assessing Officer had received the statements of persons who had admitted to have just issued bills of sale without any delivery of goods. In view of such evidence, where the assessee had not entered into real transaction of purchase of goods and in the absence of any delivery of goods, the sales are bogus and the entire sales are to be added in the hands of assessee. Admittedly, the dealer had not even paid VAT against such passing of goods.

III. The case where the Assessing Officer had confronted the information received from the Sales Tax Department and had supplied copies of statements recorded and had also issued notice under section 133(6) of the Act, where hawala dealer was not traceable and in the absence of the assessee failing to file any documentary evidence of delivery of goods, addition is



to be upheld in the hands of assessee on account of such bogus purchases.

V. The next instance is the case of goods which have been admittedly sold by the hawala dealer and has been received by the assessee, who in turn had maintained quantitative details and also evidence of its movement i.e. transportation details and quality control details of consumption of the said material or exact details of sale of the same consignment through same transporter directly to the party, then the total purchases cannot be added in the hands of assessee. However, since the purchases are made from the grey market, some estimation needs to be made in the hands of assessee. The Tribunal in *M/s. Chetan Enterprises Vs. ACIT (supra)* has already held that the addition be made by estimating the same @ 10% of the alleged hawala purchases, over and above the GP shown by the respective assessee.

V. Another set of cases where the statements recorded by the Sales Tax Department have been handed over to the assessee and the copies of same have been supplied to the assessee, then where the assessee established the case of receipt of goods and its onward transmission, then the factum of purchases by the assessee stands established in such circumstances. However, estimation is to be made in the hands of assessee because of purchases from the grey market and following the above said ratio, addition is to be made by estimating the same @ 10% of the alleged hawala purchases, over and above the net profit shown by the assessee.

(Emphasis supplied)

21. Same principle has been followed by Hon'ble ITAT Pune Bench in the case of *ACIT vs Shri Pritam S Mahale ITA No. 183/PUN/2020 (Pune Tribunal)* wherein the disallowance of whole of bogus purchase was confirmed in the case of a civil contractor by observing that the assessee failed to establish the consumption of such goods in the execution of civil contract by adducing stock movement records. The Hon'ble ITAT also observed that since it was not a case of trader therefore, the ratio of Hon'ble Bombay High court in the case of "*PCIT Vs Mohammad Haji Adam & Co.*" (ITA 1004 of 2016) (Bombay HC) cannot be applied. The relevant portion of this decision is as under:

7. On perusal of records, we find that, upon the receipt of information from DGIT(INV), the Ld. AO after identifying the list of entry operators with whom the assessee had alleged hawala transactions and quantification of amount of bogus purchases involved, has put the respondent assessee to notice calling evidential documents to prove the existence of parties and genuineness of transactions, and in the event of failure to showcase physical movement of goods & consumption thereof, disallowed the entire amount of bogus. Whereas, the Ld. FAA



reverberating the findings of lower authority, restricted the disallowance to the GP ratio in the light of Hon'ble Jurisdictional High Court of Bombay in "Mohammad Haji Adam & Co." (Supra) for the reason of acceptance of sales/revenue without dispute. Insofar as the bogus purchases are concerned, the ratio laid in "Mohammad Haji Adam & Co." (Supra) cannot squarely be applied to the present case for three factual variations, firstly the assessee before us is neither a trader nor a dealer but a Govt Civil Contractor and secondly there was complete absentia with regards to quantitative details or consumption of material purchased, and finally the sales or revenue were not exclusively with reference to goods purchases/consumed but inclusive of work contract services. However, the Hon'ble Lordship had occasioned to considered similar facts and circumstance in the case of "PCIT Vs Pinaki D Pinani" (Bombay ITA/1543 of 2017), wherein the assessee being civil contractor, with evidential stock records and sales, was able to demonstrate the quantity of material consumed in execution of work contract undertaken and thereby established the nexus.

8. In the light of aforesaid discussion, we are of the considered view that, the ratio laid down by the Hon'ble Supreme Court in the case of "NK Proteins Ltd vs DCIT" (Supra) is squarely applicable to the facts of assessee case, where the Hon'ble Supreme Court dismissed appeal of assessee and confirmed the findings of Hon'ble Gujarat High Court in respect of bogus or sham purchases, wherein the Hon'ble Lordships, after analysing necessary facts, by para 6 of the order have held that;

"6. The Tribunal in the case of Vijay Proteins Ltd. (supra) has observed that it would be just and proper to direct the Assessing Officer to restrict the addition in respect of the undisclosed income relating to the purchases to 25% of the total purchases. The said decision was confirmed by this Court as well. On consideration of the matter, we find that the facts of the present case are identical to those of M/s. Indian Woollen Carpet Factory (supra) or Vijay Proteins Ltd. (supra) In the present case the Tribunal has categorically observed that the assessee had shown bogus purchases amounting to Rs. 2,92,93,2887- and taxing only 25% of these bogus claim goes against the principles of Sections 68 and 69C of the Income Tax Act. The entire purchases shown on the basis of fictitious invoices have been debited in the trading account since the transaction has been found to be bogus. The Tribunal having once come to a categorical finding that the amount of Rs. 2,92,93,2887- represented alleged purchases from bogus suppliers it was not incumbent on it to restrict the disallowance to only Rs. 73,23,3227."



9. In the present case too, when it has been categorically established that, the amount of bogus purchases 64,33,495/- is debited to P&L by fictitious tax invoices and the respondent assessee failed to establish the consumption of such goods in the execution of civil contract by adducing such stock movement records to the satisfaction of Ld. AO., then taxing such bogus purchases GP rate of goes against the principles of taxation embedded in chapter VI of the Act and against the ratio laid down in "N K Proteins Ltd" and "PCIT Vs Pinaki D Pinani" (Supra), for the reason, we are of the considered view that, the Ld. AO was right in making 100% disallowance towards bogus / hawala purchases, and thus we are inclined to uphold the order of assessment and reverse the order the Ld. FAA.

(Emphasis supplied)

22. The above decisions clearly lay down a principle that in cases where the assessee is able to substantiate the actual delivery of alleged goods by way of documentary evidences or by furnishing complete quantitative details of goods or the assessee is able to substantiate that the goods were actually consumed during the production (in case of manufacturing) or passed on to buyer (in case of trading), in that case a percentage of alleged bogus purchases needs to be added because in such cases, the goods have been received by the assessee. However, if the assessee is unable to substantiate the actual receipt of goods by way of filing either of above, whole of bogus purchases needs to be disallowed as the assessee has failed to substantiate that goods were actually received by him. In the present case, the appellant has neither filed quantitative details of goods nor the appellant has filed any document substantiating that the goods mentioned in these bogus purchase bills were actually sold to some buyers. As noted by the Assessing Officer, the appellant is not maintaining any stock register. Therefore, in the present case, there is complete absentia with regards to quantitative details or further transmission of material to the buyers. In the absence of these details, it cannot be simply presumed that the goods were procured by the appellant from grey market. Accordingly, by following the ratio laid down in the above-mentioned cases, the whole of the amount corresponding to bogus purchases needs to be disallowed. Accordingly, the action of the Assessing Officer of disallowing whole of the amount corresponding to the bogus purchases is upheld. The addition of Rs. 12,89,039/- is accordingly confirmed. The grounds no. 2 and 3 filed by the appellant are DISMISSED."

6.7 We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. Counsel for the assessee submitted that sales have not been doubted by the Ld.



Assessing Officer and therefore, only a certain part of the gross profit could have been disallowed in the case of the assessee and not the entire bogus purchases. In our opinion, the assessee has to demonstrate that the alleged bogus purchases have been entered into the stock register and the corresponding sales bills through which those goods have been delivered to the subsequent buyers. In the case the Assessing Officer has not doubted the sales of the assessee but the assessee has failed to demonstrate whether the goods purchased through those bogus bills have been actually transmitted further to the subsequent buyers. Since, the assessee has not succeeded in either producing the stock register and or to link the quantity corresponding to the bogus purchases with the quantity sold in the sales bills. In such a situation, it cannot be presumed that assessee had made purchases from grey market and only bogus bills were received from those 'hawala' dealers. Wherever, goods sold are tallied or linked with the goods recorded in the stock register as purchased, in those cases , it could be presumed that an assessee might have purchased goods in cash from grey market, but in the case of the assessee in absence of stock register this could not be verified and therefore, we justify the action of the Ld. CIT(A) and uphold disallowance of the entire bogus purchases. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we uphold the same. The grounds of appeal raised in both the appeals, are therefore, accordingly dismissed.



7. In the result, both the appeals of the assessee are dismissed.

**Order pronounced in the open Court on 07/02/2024.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 07/02/2024

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**